

AMENDED IN ASSEMBLY JULY 3, 2002

AMENDED IN SENATE MAY 23, 2002

AMENDED IN SENATE MAY 21, 2002

AMENDED IN SENATE MAY 9, 2002

SENATE BILL

No. 1818

Introduced by Senator Romero

*(Principal coauthors: Assembly Members Chu, Koretz, and
Negrete McLeod)*

February 22, 2002

An act to add Section 3339 to the Civil Code, ~~to add Chapter 7 (commencing with Section 830) to Title 10 of Part 2 of the Code of Civil Procedure,~~ to add Chapter 17.3 (commencing with Section 7285) to Division 7 of Title 1 of the Government Code, to add Chapter 1 (commencing with Section 24000) to Division 20 of the Health and Safety Code, and to add Chapter 4 (commencing with Section 1400) to Division 4 of the Labor Code, relating to ~~backpay~~ *employment laws*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Romero. ~~Backpay awards~~ *Employment laws: enforcement actions.*

Existing law provides protections, rights, and remedies to persons who have applied for employment, or persons who are employed, in this state pursuant to provisions in the Civil Code, the Government Code, the Health and Safety Code, and the Labor Code.

This bill would make a legislative finding and declaration that all protections, rights, and remedies available under state law, except as prohibited by federal law, are available to individuals regardless of

immigration status who have applied for employment, or who are or who have been employed, in this state. The bill would further find and declare that for the purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant to the issue of liability and no inquiry shall be permitted into a person's immigration status except when necessary to comply with federal immigration law.

This bill would add similar provisions to the Government Code, the Labor Code, and the Health and Safety Code relative to enforcement actions relating to the rights of employees.

~~Existing Labor Code provisions grant employees the right to engage in union organizing activity and collective bargaining, among other things.~~

~~This bill would declare, among other things, that employers found violating state laws affecting state-regulated union activity or collective bargaining, among others, must be subjected to meaningful penalties that will create an effective disincentive to unlawful practices in the event that federal immigration law is held by a court to preempt an award of backpay under the Labor Code to an individual who is an alien not authorized for employment under federal law.~~

~~This bill would require a court, if it finds that any provision of the Labor Code relating to a backpay award is unconstitutional or preempted because an individual against whom a violation was committed is an alien unauthorized for employment under federal law, to calculate the amount of the backpay award and levy it as a civil penalty against the offending employer. It would make the civil penalty assessed recoverable by the affected individual through a civil action or administrative proceeding.~~

~~This bill would provide that if a court finds that the above provisions allowing recovery of a civil penalty are unconstitutional or preempted, the civil penalty assessed against the employer shall be deposited into an account in the General Fund which is created by this bill, and would require that the moneys therein be used to pay for awards to qualifying individuals, subject to specified findings by, and under procedures to be established by regulation of, the Attorney General.~~

~~This bill would add similar provisions to the Civil Code, the Code of Civil Procedure, the Government Code, and the Health and Safety Code.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.



The people of the State of California do enact as follows:

~~SECTION 1. Section 3339 is added to the Civil Code, to read:~~

SECTION 1. *Section 3339 is added to the Civil Code, to read:*

3339. *The Legislature finds and declares the following:*

(a) *All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.*

(b) *For purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law.*

(c) *The provisions of this section are declaratory of existing law.*

(d) *The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

SEC. 2. *Chapter 17.3 (commencing with Section 7285) is added to Division 7 of Title 1 of the Government Code, to read:*

CHAPTER 17.3. *ENFORCEMENT ACTIONS*

7285. *The Legislature finds and declares the following:*

(a) *All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.*

(b) *For purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the*

1 *person seeking to make the inquiry has shown by clear and*
2 *convincing evidence that the inquiry is necessary in order to*
3 *comply with federal immigration law.*

4 *(c) The provisions of this section are declaratory of existing*
5 *law.*

6 *(d) The provisions of this section are severable. If any provision*
7 *of this section or its application is held invalid, that invalidity shall*
8 *not affect other provisions or applications that can be given effect*
9 *without the invalid provision or application.*

10 *SEC. 3. Chapter 1 (commencing with Section 24000) is added*
11 *to Division 20 of the Health and Safety Code, to read:*

12
13 *CHAPTER 1. ENFORCEMENT ACTIONS*
14

15 *24000. The Legislature finds and declares the following:*

16 *(a) For purposes of enforcing state labor, employment, civil*
17 *rights, and employee housing laws, all protections, rights, and*
18 *remedies available under state law, except any reinstatement*
19 *remedy prohibited by federal law, are available to all individuals*
20 *regardless of immigration status who have applied for*
21 *employment, or who are or who have been employed, in this state.*

22 *(b) For purposes of enforcing state labor and employment*
23 *laws, a person's immigration status is irrelevant to the issue of*
24 *liability, and in proceedings or discovery undertaken to enforce*
25 *those state laws no inquiry shall be permitted into a person's*
26 *immigration status except where the person seeking to make this*
27 *inquiry has shown by clear and convincing evidence that the*
28 *inquiry is necessary in order to comply with federal immigration*
29 *law.*

30 *(c) The provisions of this section are declaratory of existing*
31 *law.*

32 *(d) The provisions of this section are severable. If any provision*
33 *of this section or its application is held invalid, that invalidity shall*
34 *not affect other provisions or applications that can be given effect*
35 *without the invalid provision or application.*

36 *SEC. 4. Chapter 4 (commencing with Section 1400) is added*
37 *to Division 4 of the Labor Code, to read:*
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CHAPTER 4. ENFORCEMENT ACTIONS

1400. The Legislature finds and declares the following:

(a) For purposes of enforcing state labor, employment, civil rights, and employee housing laws, all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

All matter omitted in this version of the bill appears in the bill as amended in the Senate, May 23, 2002 (JR 11)